

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

**ENERGY DIVISION**

**AGENDA ID # 11627  
RESOLUTION E-4551  
October 25, 2012**

**R E S O L U T I O N**

Resolution E-4551. Southern California Edison

**PROPOSED OUTCOME:** This Resolution approves a modified California Department of Corrections and Rehabilitation (CDCR) On Bill Finance Loan Agreement to enable the CDCR to access on bill finance loans from SCE.

**ESTIMATED COST:** No new costs. \$2 million total: \$1 million from previously authorized SCE on bill financing funds for 2010-2012 and \$1 million from (expected) 2013-2014 on bill financing funds (subject to Commission approval of SCE's 2013-2014 energy efficiency portfolio (A.12-07-004).

By Advice Letter 2738-E filed on May 25, 2012.

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**SUMMARY**

This Resolution addresses Southern California Edison (SCE) Advice Letter 2738-E which requests approval of a one-time modified On-Bill Financing (OBF) Agreement (Form 14-792-A) to incorporate changes negotiated specifically for the California Department of Corrections and Rehabilitation (CDCR), a state agency, to participate in the OBF program. CDCR could not sign SCE's existing OBF Agreement for Governmental and Institutional Customers (Form 14-792). SCE and CDCR negotiated to resolve CDCR's concerns and revised the existing Form 14-792 with new mutually-agreed upon text concerning promise to pay, breach and acceleration, no encumbrance, purchase money security interest, and confession of judgment. SCE requests that the Commission approve the modified CDCR OBF Agreement (Form 14-792-A) in its entirety, as the new CDCR OBF Agreement is an accommodation to enable the CDCR to participate in the OBF

program. The modified CDCR OBF Agreement is attached to this resolution (Attachment A).

## **BACKGROUND**

Financial Solutions, SCE's On Bill Financing energy efficiency program, was approved by the Commission (with some modifications) in D.09-09-047, issued September 24, 2009, as part of SCE's 2010-2012 energy efficiency portfolio.

On Bill Financing (OBF) offers non-residential customers a way to arrange to pay for energy efficiency upgrades without incurring any up-front costs. Under this program the utility provides customers with unsecured loans that can cover 100% of the energy efficiency equipment and installation costs (net of rebates and other incentives). Customers then re-pay the loans through charges that are added on to their regular utility bills. Loan capital is raised through SCE's energy efficiency portfolio, with loan proceeds paid back into an energy efficiency balancing account. Any defaults reduce the size of the balancing account.

D.09-09-047 set the parameters for utilities' 2010-2012 OBF programs. Terms include:

- Interest rate: 0 percent.
- Commercial and industrial loan minimum and maximum (per meter): \$5,000 - \$100,000.
- Commercial and industrial loan term: typically 5 years, but may be extended to expected useful life of installed energy efficiency measures.
- Institutional loan minimum and maximum: \$5,000 - \$1,000,000.
- Institutional loan term: up to 10 years or expected useful life, whichever is less.
- Loans are non-transferrable.
- Partial or non-payment of a loan may result in shut-off of utility service.

On March 25, 2010 SCE filed Advice Letter 2456-E, Establishing Schedule On-Bill-Financing (OBF-2), and its associated contract On-Bill-Financing Agreement (Form 14-792). On April 12, 2010 SCE submitted substitute sheets to this filing to replace the correct version of Form 14-792.

On September 12, 2011, SCE filed Advice Letter 2628-E which augmented SCE's On-Bill Financing energy efficiency program to enable SCE to serve non-residential customer demand for loans through the remainder of 2012. \$16 million was transferred from previously-authorized SCE pre-2010 unspent, uncommitted efficiency funds and up to \$15 million from 2010-12 unspent, uncommitted efficiency funds from SCE's local government and institutional partnership program. The Commission approved this advice letter by Resolution E-4473 on March 8, 2012.

On May 25, 2012, SCE filed Advice Letter 2738-E which requested approval of a one-time modified On-Bill Financing Agreement for Governmental and Institutional Customers (Form 14-792-A) to incorporate changes negotiated specifically for the California Department of Corrections and Rehabilitation (CDCR), a state agency, to participate in the OBF program. CDCR could not sign SCE's standard OBF Agreement for Governmental and Institutional Customers (Form 14-792) because it did not comply with the State of California Constitution, Article 16, Section 7, which states: "Money may be drawn from the Treasury only through an appropriation made by law and upon a Controller's duly drawn warrant." Additionally, standard contracting and service agreements held by the State of California must contain "subject to appropriation" language.

SCE and CDCR negotiated to resolve CDCR's concerns and revised the existing OBF Agreement with new text concerning promise to pay, breach and acceleration, no encumbrance, purchase money security interest, and confession of judgment. SCE requests that the Commission approve the modified CDCR OBF Agreement (Form 14-792-A) in its entirety, as the new CDCR OBF Agreement is an accommodation to enable the CDCR to participate in the OBF program. The modified CDCR OBF Agreement is attached to this resolution (Attachment A).

A data request response received by Energy Division on September 12, 2012 indicated that SCE expects to fund a \$1 million loan for CDCR for the Los Angeles County State Prison by the end of 2012. This \$1 million will come from the previously authorized 2010-2012 energy efficiency portfolio (D. 09-09-047) for SCE's on bill financing program. Additionally, SCE plans to fund another \$1 million loan for CDCR for the Kern Valley State prison in 2013 from 2013-2014 energy efficiency portfolio, which is under consideration at the Commission at this time.

SCE began work with the CDCR in summer 2012. General Order 96-B General Rule 8.2.3 gives SCE permission to work with the CDCR without first receiving Commission approval, provided that the “utility shall promptly submit an advice letter to the appropriate Industry Division to notify the Commission of the utility’s provision of such service and of the rates, charges, terms and conditions under which the service is provided. Although the advice letter may be effective pending disposition under General Rule 7.5.3, the Commission may determine, in an appropriate proceeding, the reasonableness of such service.”

### **NOTICE**

Notice of AL 2738-E was made by publication in the Commission’s Daily Calendar. SCE states that a copy of the Advice Letter was mailed and distributed in accordance with Section III-G of General Order 96-A.

### **PROTESTS**

Advice Letter 2738-E was not protested.

### **DISCUSSION**

In Advice Letter 2738-E, SCE requested that the Commission approve the modified CDCR OBF Agreement (Form 14-792-A) in its entirety. We approve the form submitted in the advice letter. The proposed form was drafted in close collaboration with CDCR, a state agency, energy efficiency is at the top of the energy “loading order” and OBF is a program that advances our energy efficiency objectives<sup>1</sup>.

Additionally, given that the OBF program targets both commercial and institutional customers, and that the problems that the CDCR had with the original OBF Loan Agreement applies equally to all state agencies – in effect, no state agencies can access OBF loans --we conclude that SCE should work with the

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<sup>1</sup> In addition to OBF, the Commission has directed the utilities to develop additional financing mechanisms for energy efficiency in A.12-07-004.

Governor's Office of Planning and Research, the Department of Finance, the Department of General Services or other similar organization that cuts across multiple state agencies, to develop a standard OBF Loan Agreement form that would broadly apply to all state agencies, to avoid the need to prepare customized resolutions each time an state agency would like to initiate an OBF loan. This standard OBF Loan Agreement form should be filed within 21 days of the effective date of this resolution as a Tier 2 Advice Letter with a letter from the Governor's Office/Department of Finance/Department of General Services/or other similar organization that requests these changes, and shall be effective when approved.

### **COMMENTS**

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

All parties in the proceeding have stipulated to reduce the 30-day waiting period required by PU Code section 311(g)(1) to 22 days. Accordingly, this matter will be placed on the first Commission's agenda twenty-two days following the mailing of this draft resolution. By stipulation of all parties, comments shall be filed no later than 15 days following the mailing of this draft resolution.

### **FINDINGS**

1. State agencies are eligible for OBF loans.
2. The CDCR is a state agency and cannot access OBF loans from SCE due to concerns with the way SCE's existing OBF agreement for Governmental and Institutional customers (Form 14-792) was worded.
3. SCE and CDCR revised Form 14-792 with mutually agreeable text and submitted this in a modified CDCR OBF Agreement (Form 14-792-A) in SCE Advice Letter 2738-E.
4. General Order 96-B General Rule 8.2.3 gave SCE permission to work with the CDCR without first receiving Commission approval, provided that the "utility shall promptly submit an advice letter to the appropriate Industry Division to notify the Commission of the utility's provision of such service

and of the rates, charges, terms and conditions under which the service is provided. Although the advice letter may be effective pending disposition under General Rule 7.5.3, the Commission may determine, in an appropriate proceeding, the reasonableness of such service.”

5. The modified CDCR OBF Agreement (Form 14-792-A) as proposed in SCE Advice Letter 2738-E should be approved in its entirety.
6. Other state agencies cannot access OBF loans from SCE due to concerns with the way SCE’s existing OBF agreement for Governmental and Institutional customers (Form 14 – 792) is worded.
7. SCE should work with the Governor’s Office of Planning and Research, the Department of Finance, the Department of General Services or other similar organization that cuts across multiple state agencies to modify Form 14-792 to apply to broadly apply to all state agencies.

**THEREFORE IT IS ORDERED THAT:**

1. The modified CDCR OBF Agreement (Form 14-792-A) that was filed in SCE Advice Letter 2738-E, and is attached to this resolution, is approved in its entirety.
2. SCE shall file a standard OBF Loan Agreement form that broadly applies to all state agencies within 21 days of this resolution as a Tier 2 Advice Letter with a letter from the Governor’s Office/Department of Finance/Department of General Services/or other similar organization that requests these changes be made.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on October 25, 2012; the following Commissioners voting favorably thereon:

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PAUL CLANON  
Executive Director

## **ATTACHMENT A**

## ATTACHMENT A

### On-Bill Financing Agreement California Department of Corrections and Rehabilitation Projects

This On-Bill Financing Agreement ("OBF Agreement") is entered into on \_\_\_\_\_ 20\_\_\_\_, (the "Effective Date") by and between the undersigned customer ("Customer") and Southern California Edison Company ("SCE") (each a "Party," collectively the "Parties").

#### Recitals

1. Customer and SCE entered into the Energy Management Solutions Incentives Application for Business Customers on or about \_\_\_\_\_, 20\_\_ and if applicable, the Customized Solutions Agreement (individually or collectively referred to as "EMS Agreement"), which is/are attached hereto and incorporated herein by reference.
2. Customer owns, leases or rents the property(s) listed in the EMS Agreement as the Site(s) and maintains a service account(s) with SCE for electric service. Customer has completed installation of eligible energy efficient equipment ("Equipment") at the Site(s) as set forth in the EMS Agreement and has accepted the equipment as being operational and in good working order.
3. In Decision 09-09-047, the California Public Utilities Commission authorized SCE to provide zero-percent interest financing for the installation of certain energy efficient equipment, which is to be repaid over a specified period through the Customer's electric utility bill(s) ("On-Bill Financing").
4. Customer desires to enter into this OBF Agreement in order to participate in SCE's On-Bill Financing program and Customer agrees to repay SCE the Amount Financed (as defined under "Loan Terms", below) through the Customer's SCE utility bill(s) pursuant to the terms and conditions of this OBF Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

#### Terms and Conditions

**Defined Terms:** Except as the context otherwise requires, capitalized terms used in this OBF Agreement without definition shall have the same meanings as are set forth in the EMS Agreement.

**Amount Financed:** Within thirty (30) days after the Effective Date, SCE will provide a payment for the Amount Financed to Customer under the Loan Terms, below.

#### Loan Terms:

Amount Financed ("Amount Financed") :	\$ _____.00
Interest Rate:	0%
Fees:	0
Months to Pay:	
First Month Payment	
Remaining Monthly Payments:	\$



## ATTACHMENT A

Service Account to be Billed <sup>2</sup> :	
Designated Third-Party Payee (if any):	
Address of Designated Third-Party Payee:	

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1. <sup>2</sup> If more than one Service Account will be billed, information regarding the Service Account number and monthly payment is included in Schedule A attached.

## ATTACHMENT A

**Promise to Pay:** Customer promises to pay SCE the Amount Financed in equal monthly installments as set forth in the section above and/or Schedule A (Customer's "Loan Obligation"). The first Monthly Payment of Customer's Loan Obligation will appear within sixty (60) days from the Effective Date on Customer's SCE utility bill(s) for the Service Account(s) listed above.

Customer expressly acknowledges and agrees that this OBF Loan Obligation shall constitute part of Customer's monthly electric utility bill(s). Customer represents and warrants that funding for the OBF Loan Obligation repayment shall be made from Customer's operational budget for utilities. The repayment of the OBF Loan Obligation shall be subject to appropriation by the Legislature of the State of California; however, Customer represents and warrants that it will include a request for repayment of the OBF Loan Obligation in the State's annual budget.

The Parties acknowledge and agree that destruction, theft or material damage to the Equipment shall not constitute cause for voiding or otherwise terminating this Agreement.

**Manner of Payment:** Customer's Monthly Payment amount will appear as a line item labeled "EE/OBF Installment Charge" on the monthly SCE utility bill(s) for Customer's Service Account(s). **Customer may pay the Loan Obligation in the monthly installments or pre-pay the Loan Obligation in one lump sum without penalty, but pre-payments for less than the remaining balance will not be allowed.** Customer's Loan Obligation will appear on Customer's monthly SCE utility bill(s) for the number of months set forth above, or until the Loan Obligation is paid in full by Customer, whichever occurs first. Customer shall make payments to SCE as directed in the SCE utility bill(s).

**Partial Payments:** If Customer is unable to make a full payment of the Loan Obligation in any given month, payment arrangements may be made at SCE's sole discretion. Any partial payments will be applied in equal proportion to the energy charges and the Loan Obligation, and Customer will be considered to be delinquent and in default of both the energy bill and the Loan Obligation.

**Late Payments:** No late payment charges or interest will be assessed for delinquent payments on the Loan Obligation. However, SCE may assess late payment charges for delinquent payments of energy charges pursuant to SCE's Rule 9 which is incorporated herein by reference.

**Returned Payments:** SCE may require payment of a \$10.00 Returned Check Charge for any check returned from Customer's financial institution unpaid. The Returned Check Charge will also apply to any forms of payment that are subsequently dishonored.

**Discontinuance of Service:** Amounts due under this OBF Agreement will be amounts deemed due under each SCE utility bill to the Customer's Service Account(s), and a default under this OBF Agreement will be treated as a default under the Customer's Service Account(s). Customer's Loan Obligation is subject to the discontinuance provisions of SCE's Rule 11, Discontinuance and Restoration of Service, Section B, Nonpayment of Bills or Summary Bills which is incorporated herein by reference.

**Breach and Acceleration:** Any breach by Customer under the EMS Agreement or this OBF Agreement shall constitute a breach under all of the above referenced agreements. For purposes herein, SCE may determine the OBF Agreement to be breached and Customer to be in default if Customer: (1) sells, assigns or otherwise transfers ownership, possession or title of the Site(s) or the Equipment unless passed by operation of law to a successor government department or agency that remains a customer of SCE or unless Customer remains a lessee of the Site and a customer of SCE, (2) fails to pay the Monthly Payment amount when due, (3) closes, discontinues

## ATTACHMENT A

or otherwise causes the termination of the Service Account(s), or () otherwise breaches this OBF Agreement and/or the EMS Agreement, and the breach is not cured as specified therein. Notwithstanding anything to the contrary in the EMS Agreement, a breach and default as set forth in this section shall not be subject to any additional cure period. Following a breach as set forth in this section, SCE shall have the right to declare the entire unpaid balance of the Loan Obligation immediately due and payable.

**No Encumbrance:** Notwithstanding any other provision in this OBF Agreement, SCE acknowledges that nothing in this OBF Agreement shall constitute a mortgage, charge, assignment, transfer, pledge, lien or encumbrance upon either the Equipment or any part of the buildings, structures or related facilities in which the Equipment is constructed, installed or situated (collectively, the "Related Facilities"). Accordingly, SCE agrees it will not record or file any instrument that would indicate or imply it has a security interest in the Related Facilities, including but not limited to a UCC-1. *If this Agreement were ever construed or deemed to create any such an encumbrance, then this Agreement shall be junior and subordinate in all respects to the terms and conditions of a lease or indenture related to lease revenue bonds issued by the State Public Works Board or any other issuer of bonds on behalf of the state concerning the Related Facilities entered into in the past, present or future.*

## ATTACHMENT A

**Modification:** Any change to this OBF Agreement must be in writing and signed by Customer and SCE; except that during any given month, if Customer is unable to make full payment on the Loan Obligation, payment arrangements may be made at SCE's sole discretion without modifying this OBF Agreement in writing. Any written modification or amendment will not be effective unless and until signed by SCE or such condition is waived by SCE in its sole and absolute discretion.

**Term and Termination:** It is the Parties intent that the term of this OBF Agreement and the EMS Agreement run concurrently. Therefore, the OBF Agreement shall continue in effect until the Loan Obligation is paid in full.

**Assignment:** Notwithstanding anything to the contrary in this OBF Agreement, Customer may not assign its rights or delegate its duties under the Agreement.

**Additional Representations:** Each person signing this OBF Agreement represents and warrants that he or she is duly authorized and has the legal capacity to execute and deliver this OBF Agreement on behalf of Customer, and to perform their obligations under this OBF Agreement. Customer further represents and warrants that if it is a legal entity, it is in good standing in its state of formation.

**Miscellaneous:** Except as otherwise specifically provided herein, all terms, provisions, covenants, representations, warranties, agreements and conditions of the EMS Agreement shall remain unchanged and in full force and effect. Should a conflict exist between this OBF Agreement, the EMS Agreement and the documents incorporated by reference, this OBF Agreement shall control. This OBF Agreement shall be construed and interpreted in accordance with, and shall be governed and enforced in all respects according to, the laws of the State of California. This OBF Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. If any one or more of the provisions contained in this OBF Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, then this OBF Agreement shall be construed as if such invalid, illegal or unenforceable term or provision had never been contained herein and all other provisions of this OBF Agreement shall be construed to remain fully valid, enforceable and binding on the parties. The Recitals set forth above are hereby incorporated herein by reference.

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## ATTACHMENT A

IN WITNESS WHEREOF, the Parties have executed this OBF Agreement as of the Effective Date.

**Customer:**

**Southern California Edison Company:**

Authorized Representative:

Authorized Representative:

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Title:

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Title:

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Signature:

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Signature:

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Date:

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Date:

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Business Address:

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Business Address:

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Telephone No.

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Telephone No.

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Fax No.

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Fax No.

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E-Mail Address:

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E-Mail Address:

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# ATTACHMENT A

## SCHEDULE A

Customer Name: \_\_\_\_\_

OBF Loan Number: \_\_\_\_\_

Site Service Account Number	OBF Billing Repayment Service Account Number	1 <sup>st</sup> Monthly OBF Loan Payment	Remaining Monthly OBF Loan Payments
X-XXX-XXXX-XX	X-XXX-XXXX-XX	\$XX.XX	\$XXX.XX per month for X months
Total Monthly Repayment		\$XX.XX	\$XXX.XX per month for X months